

§ 4041.29

29 CFR Ch. XL (7–1–01 Edition)

by the insurer to answer questions concerning the annuity; and

(iv) A statement that the participant or beneficiary will receive from the plan administrator or insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's plan benefits.

§ 4041.29 Post-distribution certification.

(a) *Deadline.* Within 30 days after the last distribution date for any affected party, the plan administrator must file with the PBGC a post-distribution certification consisting of the PBGC Form 501, completed in accordance with the instructions thereto.

(b) *Assessment of penalties.* The PBGC will assess a penalty for late filing of a post-distribution certification only to the extent the certification is filed more than 90 days after the distribution deadline (including extensions) under § 4041.28(a).

§ 4041.30 Requests for deadline extensions.

(a) *In general.* The PBGC may in its discretion extend a deadline for taking action under this subpart to a later date. The PBGC will grant such an extension where it finds compelling reasons why it is not administratively feasible for the plan administrator (or other persons acting on behalf of the plan administrator) to take the action until the later date and the delay is brief. The PBGC will consider—

(1) The length of the delay; and

(2) Whether ordinary business care and prudence in attempting to meet the deadline is exercised.

(b) *Time of extension request.* Any request for an extension under paragraph (a) of this section that is filed later than the 15th day before the applicable deadline must include a justification for not filing the request earlier.

(c) *IRS determination letter requests.* Any request for an extension under paragraph (a) of this section of the deadline in § 4041.25(c) for submitting a determination letter request to the IRS (in order to qualify for the distribution deadline in § 4041.28(a)(1)(ii)) will be deemed to be granted unless the

PBGC notifies the plan administrator otherwise within 60 days after receipt of the request (or, if later, by the end of the PBGC's review period under § 4041.26(a)). The PBGC will notify the plan administrator in writing of the date on which it receives such request.

(d) *Statutory deadlines not extendable.* The PBGC will not—

(1) *Pre-distribution deadlines.* (i) Extend the 60-day time limit under § 4041.23(a) for issuing the notice of intent to terminate; or

(ii) Waive the requirement in § 4041.24(a) that the notice of plan benefits be issued by the time the plan administrator files the standard termination notice with the PBGC; or

(2) *Post-distribution deadlines.* Extend the deadline under § 4041.29(a) for filing the post-distribution certification. However, the PBGC will assess a penalty for late filing of a post-distribution certification only under the circumstances described in § 4041.29(b).

§ 4041.31 Notice of noncompliance.

(a) *Failure to meet pre-distribution requirements.* (1) *In general.* Except as provided in paragraphs (a)(2) and (c) of this section, the PBGC will issue a notice of noncompliance within the 60-day (or extended) time period prescribed by § 4041.26(a) whenever it determines that—

(i) The plan administrator failed to issue the notice of intent to terminate to all affected parties (other than the PBGC) in accordance with § 4041.23;

(ii) The plan administrator failed to issue notices of plan benefits to all affected parties entitled to plan benefits in accordance with § 4041.24;

(iii) The plan administrator failed to file the standard termination notice in accordance with § 4041.25;

(iv) As of the distribution date proposed in the standard termination notice, plan assets will not be sufficient to satisfy all plan benefits under the plan; or

(v) In the case of a spin-off/termination transaction (as described in § 4041.23(c)), the plan administrator failed to issue any notice required by § 4041.23(c), § 4041.24(f), or § 4041.27(a)(2) in accordance with such section.

(2) *Interests of participants.* The PBGC may decide not to issue a notice of

noncompliance based on a failure to meet a requirement under paragraphs (a)(1)(i) through (a)(1)(iii) or (a)(1)(v) of this section if it determines that issuance of the notice would be inconsistent with the interests of participants and beneficiaries.

(3) *Continuing authority.* The PBGC may issue a notice of noncompliance or suspend the termination proceeding based on a failure to meet a requirement under paragraphs (a)(1)(i) through (a)(1)(v) of this section after expiration of the 60-day (or extended) time period prescribed by §4041.26(a) (including upon audit) if the PBGC determines such action is necessary to carry out the purposes of Title IV.

(b) *Failure to meet distribution requirements.* (1) *In general.* If the PBGC determines, as part of an audit or otherwise, that the plan administrator has not satisfied any distribution requirement of §4041.28(a) or (c), it may issue a notice of noncompliance.

(2) *Criteria.* In deciding whether to issue a notice of noncompliance under paragraph (b)(1) of this section, the PBGC may consider—

(i) The nature and extent of the failure to satisfy a requirement of §4041.28(a) or (c);

(ii) Any corrective action taken by the plan administrator; and

(iii) The interests of participants and beneficiaries.

(3) *Late distributions.* The PBGC will not issue a notice of noncompliance for failure to distribute timely based on any facts disclosed in the post-distribution certification if 60 or more days have passed from the PBGC's receipt of the post-distribution certification. The 60-day period may be extended by agreement between the plan administrator and the PBGC.

(c) *Correction of errors.* The PBGC will not issue a notice of noncompliance based solely on the plan administrator's inclusion of erroneous information (or omission of correct information) in a notice required to be provided to any person under this part if —

(1) The PBGC determines that the plan administrator acted in good faith in connection with the error;

(2) The plan administrator corrects the error no later than —

(i) In the case of an error in the notice of plan benefits under §4041.24, the latest date an election notice may be provided to the person; or

(ii) In any other case, as soon as practicable after the plan administrator knows or should know of the error, or by any later date specified by the PBGC; and

(3) The PBGC determines that the delay in providing the correct information will not substantially harm any person.

(d) *Reconsideration.* A plan administrator may request reconsideration of a notice of noncompliance in accordance with the rules prescribed in part 4003, subpart C.

(e) *Consequences of notice of noncompliance.* (1) *Effect on termination.* A notice of noncompliance ends the standard termination proceeding, nullifies all actions taken to terminate the plan, and renders the plan an ongoing plan. A notice of noncompliance is effective upon the expiration of the period within which the plan administrator may request reconsideration under paragraph (d) of this section or, if reconsideration is requested, a decision by the PBGC upholding the notice. However, once a notice is issued, the running of all time periods specified in ERISA or this part relevant to the termination will be suspended, and the plan administrator may take no further action to terminate the plan (except by initiation of a new termination) unless and until the notice is revoked. A plan administrator that still desires to terminate a plan must initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2) *Effect on plan administration.* If the PBGC issues a notice of noncompliance, the prohibitions in §4041.22(a)(1) and (a)(2) will cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of a decision on reconsideration upholding the notice of noncompliance.

(3) *Revocation of notice of noncompliance.* If a notice of noncompliance is revoked, unless the PBGC provides otherwise, any time period suspended by the issuance of the notice will resume running from the date of the revocation. In no case will the review period under § 4041.26(a) end less than 60 days from the date the PBGC received the standard termination notice.

(f) *If no notice of noncompliance is issued.* A standard termination is deemed to be valid if—

(1) The plan administrator files a standard termination notice under § 4041.25 and the PBGC does not issue a notice of noncompliance pursuant to § 4041.31(a); and

(2) The plan administrator files a post-distribution certification under § 4041.29 and the PBGC does not issue a notice of noncompliance pursuant to § 4041.31(b).

(g) *Notice to affected parties.* Upon a decision by the PBGC on reconsideration affirming the issuance of a notice of noncompliance or, if earlier, upon the plan administrator's decision not to request reconsideration, the plan administrator must notify the affected parties (other than the PBGC), and any persons who were provided notice under § 4041.23(c), in writing that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

Subpart C—Distress Termination Process

§ 4041.41 Requirements for a distress termination.

(a) *Distress requirements.* A plan may be terminated in a distress termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 4041.43 at least 60 days and (except with PBGC approval) not more than 90 days before the proposed termination date;

(2) The plan administrator files a distress termination notice with the PBGC in accordance with § 4041.45 no later than 120 days after the proposed termination date; and

(3) The PBGC determines that each contributing sponsor and each member of its controlled group satisfy one of the distress criteria set forth in paragraph (c) of this section.

(b) *Effect of failure to satisfy requirements.* (1) Except as provided in paragraph (b)(2)(i) of this section, if the plan administrator does not satisfy all of the requirements for a distress termination, any action taken to effect the plan termination is null and void, and the plan is an ongoing plan. A plan administrator who still desires to terminate the plan must initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2)(i) The PBGC may, upon its own motion, waive any requirement with respect to notices to be filed with the PBGC under paragraph (a)(1) or (a)(2) of this section if the PBGC believes that it will be less costly or administratively burdensome to the PBGC to do so. The PBGC will not entertain requests for waivers under this paragraph.

(ii) Notwithstanding any other provision of this part, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

(c) *Distress criteria.* In a distress termination, each contributing sponsor and each member of its controlled group must satisfy at least one (but not necessarily the same one) of the following criteria in order for a distress termination to occur:

(1) *Liquidation.* This criterion is met if, as of the proposed termination date—

(i) A person has filed or had filed against it a petition seeking liquidation in a case under title 11, United States Code, or under a similar federal law or law of a State or political subdivision of a State, or a case described in paragraph (e)(2) of this section has been converted to such a case; and

(ii) The case has not been dismissed.

(2) *Reorganization.* This criterion is met if—

(i) As of the proposed termination date, a person has filed or had filed against it a petition seeking reorganization in a case under title 11, United States Code, or under a similar law of